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LAND LAW ASSESSMENT

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LAND LAW ASSESSMENT

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INTRODUCTION

PURPOSE STATEMENT OF THE APPRAISAL

This report is based on a review of the land and farm reorganization legislation in the Republic of Tajikistan commissioned by USAID and the ARD/CHECCHI Commercial Law Project. This study was funded by the United States Agency for International Development (USAID) as a part of its engagement with communities and the Tajikistan government to promote private sector development for growth and poverty reduction. Land issues are a part of the larger framework of economic and judicial reform, governance and capacity building. The purpose of this study is to provide feedback to policymakers about the legal and regulatory framework for land reform and farm reorganization in Tajikistan today. The study does not attempt to provide information on the implementation of this legislation; rather, it sets out the existing formal, written rules of land reform, farm reorganization, and land market development and provides recommendations for changes and improvement to them.

LAND LEGISLATION IN THE DEVELOPMENT AGENDA OF TAJIKISTAN

Land policy and legislation in Tajikistan is designed to establish an equitable basis for property distribution and administration in support of the societal goals of agricultural growth, poverty reduction, and construction of an effective State. The land legislation has evolved considerably over previous years. Despite these efforts at legislative and policy reform, full achievement of the macro-level goals of rapid agricultural growth and democratization of rural institutions is only partially fulfilled.

One of the basic functions of public administration in the country is implementing land legislation. But neither the authority, nor the responsibilities of state government bodies and local self-government are clearly delineated, and the legislation is often over-burdensome to private individuals.

Land's role in Tajikistan's development agenda continues to evolve. Policymakers have identified land tenure rights as a basic and important institution for social and economic relations. This is especially true in rural areas where land relations have profound implications for agricultural productivity, environmental sustainability, and the economic and social status of rural households. Nonetheless, designing a legal framework that promotes a smooth and effective transition to agricultural land tenure relations consistent with market-oriented development remains a major challenge.

The report is organized into eight sections: (I) Introduction, (II) General Legislation, (III) Land Reform, (IV) Farm Reorganization, (V) Enterprises, (VI) Transactions, (VII) Land Management, and (VIII) State Institutions. Each section describes the main issues presented in the legislation, the recommendations related to these issues, and then a more detailed description of what each law says, and the issues noted. In total, 64 pieces of legislation were reviewed, including Laws, Presidential Decrees, Government Resolutions, and In-House Legal Normative Acts. The Executive Summary analyzes the legislation as a whole in light of the three goals of increasing land tenure rights for individuals, collective and state farm reorganization, and land market development.

I.0 GENERAL LAWS

I.1 CONSTITUTION

I.1.1 Summary of Main Issues

- Land is in state ownership.
- All forms of ownership rights are protected.
- Local government is not elected.

I.1.2 Issue Detail

a) Rights of Ownership

Land and other natural resources are owned by the State (Art. 13). Tajikistan's economy is based on various forms of ownership, including private ownership, and the state will guarantee freedom of economic activity, entrepreneurship, equality of rights, and protection of all forms of ownership (Art. 12). Every person has the right to ownership and inheritance. Property can only be taken away on the basis of law for a State or societal purpose, with the consent of the owner, and with the State paying full compensation (Art. 32).

b) Local Government

Heads of local government are appointed by the President (Art. 78). The head of a local government can adopt legal documents within the framework of their authority and implementation in their district is then compulsory (Art. 79).

I.2 CIVIL CODE, PART I

I.2.1 Summary of Main Issues

- A land right can be contributed to the charter capital of a newly formed enterprise (including a *dekhkan* farm), and the right holder thereby loses the right to withdraw land without the consent of the entire enterprise. This provision conflicts with other laws which allow a member of a *dekhkan* farm to withdraw land without the permission of other members. For other enterprises, there is no such protection, however.
- The state has great leeway in withdrawing (confiscating) land and other immovable property.
- Land cannot be the subject of ownership.

I.2.2 Recommendations

- While farmers are figuring out their rights and determining what to do with their share of land they should not be forced into common ownership of land which requires the whole farm's approval for them to exit the enterprise and farm independently. This is recommended because the individual's right to exit

the enterprise with his share of land, partitioned in kind, without consent from other common owners, must be the basis for meaningful agricultural land reform. Further, the ability to freely disassociate from an enterprise offers the only significant hope for the emergence of a substantially decollectivized farm sector in the future.

- Allow households and individuals to withdraw from a *dekhkan* farm enterprise. If lawmakers are concerned about withdrawal of land plots too small to form an economically efficient farm, a minimum size for a land plot can be legislated.

I.2.3 Issue Detail

a) General Provisions

The Civil Code regulates property relations unless otherwise provided by legislation on land or other special legislation (Art.1).

b) Land Ownership

Land is not held in private ownership. Land is in the exclusive ownership of the Republic of Tajikistan (Art. 289).

c) Common “Ownership” of Land and Withdrawal from Reorganized Enterprise

Chapters 15 and 17 of the Civil Code both discuss the issue of common ownership of land in the context of farm enterprises.

i) Chapter 15

Chapter 15 talks about collective property as the “property of legal persons.”

- Article 274 defines collective property as including, “the property of leased enterprises, collective enterprises, cooperatives, collective farms, joint-stock companies, business partnerships and companies, business associations, public and religious organizations, municipal property and property of other associations being legal persons.”
- Article 275 provides that property in collective ownership shall be common property and includes “manufactured products and gained income.”
- Article 292 provides that property owned by two or more people is considered to be “common ownership” (shared ownership).”
- Article 294 states, “Disposition of property that is in share ownership shall be made by agreement of all its participants.”
- Article 295 states, “Possession and use of property that is in share ownership shall be conducted by agreement of all its participants, and, in case of failure to achieve agreement, by a procedure established by a court.”

If a member of an enterprise contributes his land to the enterprise, agreement of all members of the legal enterprise is required if that member wants to partition and leave the farm.

The withdrawal provisions described above are appropriate for most types of property held in common ownership, but not for agricultural land shares from former collective farms. However, applying the above rules severely restricts the freedom of each shareholder to depart with his share since decisions on allocation of the land require the unanimous approval of the entire group of shareholders, typically several hundred in number.

ii) Chapter 17

The second instance where common ownership arises as an issue in the Civil Code is in relation to *dekhkan* farms in Chapter 17. The property of a *dekhkan* farm belongs to the members by right of joint ownership (Art. 305). The *dekhkan* farm's means of production are not subject to division in the case of exit of one of its members from the farming operation. The person exiting from the farming operation has the right to receipt of monetary compensation corresponding to his share in the common ownership of this property (Art. 306). In practice, many *dekhkan* enterprises are formed on a multi-household basis, and a withdrawing household should be able to recover its land contribution. Likewise, individual members of a household should also be able to withdraw their original land contribution.

None of these provisions make it easy or reasonable for members of reorganized farms to establish their own private farms once they are confident enough to do so. This becomes a particular problem because few of the reorganized farm enterprises have been truly privatized.

In the Kyrgyz Republic, agricultural land owners may not contribute their ownership or long-term use rights to the charter capital of an organization unless they also have the right to withdraw their land in-kind. Furthermore, members of a peasant farm also have the right to withdraw with their land unless the partition produces a very small plot of land, a size determined by local governments but within a range established by the Land Code.

d) Rights of Ownership and Use

An owner has the right to possess, use and dispose of his property (Art. 232). In addition to the right of ownership, rights *in rem* shall include: the right to use land; right of economic management; the right of operative administration; and other rights *in rem*.

e) Termination of Ownership

Compulsory takings are allowed for “confiscation,” but confiscation is not defined (Art. 262).

f) Termination of the Right of Ownership to Immovables

If a state agency causes immovables to be removed from land, or other natural resources at the time of withdrawing of the land, the owner must be compensated for losses (Art. 263).

g) Prohibition on Land Ownership

Citizens may own houses, plantings, animals, means of transportation, and money, but not land (Art. 271).

h) Pledge

Mortgage of structures and buildings is allowed, and also mortgaging the rights to a land parcel and other natural resources (Art. 362).

I.3 CIVIL CODE, PART II

I.3.1 Summary of Main Issues

- The sale of the right to use a land parcel is not forbidden.
- The Code provides a very broad guarantee to the buyer of immovable property (two years to discover a defect).

I.3.2 Issue Detail

a) Chapter 29: Purchase and Sale

i) Selling Immovable Property

There are five main requirements for the sale of a building, structure or other immovable to be valid. First, the sale of immovable property must be by written contract in a single document that has been signed by the parties (Art. 581). Failure to observe these requirements makes the sale invalid. Second, the transfer of the right of ownership of immovable property is subject to state registration (Art. 582). Third, the sale contract for immovable property must include the description and location of the immovable property sufficient to establish its identity. A contract without this specific information is void (Art. 584). Fourth, the sale contract for the immovable property must provide the price. A contract with a missing price term is void (Art. 585). Finally, the transfer of immovable property from the seller to the buyer must be memorialized by a “statement of transfer” that is signed by the parties (Art. 586(1)).

ii) Buyer Protection

Even if a buyer accepts immovable property that does not match the terms of sale, it is not grounds for freeing the seller from liability for breach of the contract (Art. 586(2)). Also, when there is a breach of contract by the seller regarding the quality of the immovable property, the buyer’s recourse depends on the degree of quality deficit (Art. 511).

iii) Discovery of Defects

Unless the sale contract for immovable property provides otherwise, the buyer must discover the defect(s) within two (2) years from the day of transfer (Art. 513(2)). If the defect is discovered outside of two years, the buyer can still recover exception if she can show the defect arose before the transfer or due to causes that arose before the transfer (Art. 513(5)).

iv) Selling Buildings on Land – Rights to Use the Land Plot

The land use right the buyer acquires when purchasing a building, structure or other immovable is governed by Article 583. Under a contract of sale of immovable property the seller’s rights of use to the corresponding part of the land parcel are transferred to the buyer simultaneously with the transfer of the right of ownership to immovable property.

When the seller is the user of the land parcel, some land right must be transferred to the buyer of the immovable. The right the seller is transferring to the buyer could be a right of use, right of lease or some other right provided by contract. If the contract for sale of the immovable does not specify a transfer to the buyer of a right to use the land then the buyer will automatically have the right to use the land plot under the immovable and any land necessary for use of the immovable.

When the immovable is located on land that does not belong to the seller by a right of use, the sale is allowed without the consent of the land parcel user only if the sale of the immovable does not contradict the use conditions of the land parcel established by a contract or law (see e.g. Land Code). In this type of sale, the buyer obtains the right of use to the land on the same conditions as the seller of the immovable.

I.4 DRAFT CIVIL CODE, PART III

I.4.1 Summary of Main Issues

- The inheritance law does not follow or take into account customary inheritance rules, which often protect the whole family and are desired by rural families. Rather, inheritance at law distributes property equally to all children and the spouse.
- Death of a party to joint property is grounds for identification of his share of the joint property right and a division of the joint property or separation of the deceased's share. This rule includes the right to land in a *dekhkan* farm (Art. 1141). However, heirs who had common property with the deceased have a priority right to receive in-kind property out of the common property (Art. 1185).
- If not otherwise determined by an agreement of all heirs who accepted the inheritance, an enterprise (Art. 144 of the Civil Code) which is part of an inheritance, is not subject to in-kind distribution and becomes the common property of the heirs with respect to their shares (Art. 1184).

I.4.2 Recommendation

- Since many rural residents do not create wills, the provisions related to inheritance at law should be reconsidered to allow for customary inheritance rules where applicable and desirable.

I.5 LAW OF THE REPUBLIC OF TAJIKISTAN “ON REGULATORY-LEGAL ACTS” NO. 54, DECEMBER 8, 2003

I.5.1 Summary of Main Issues

- This law defines the types of regulatory-legal acts in Tajikistan and establishes a general procedure for their preparation, publication, interpretation, and for the resolution of conflicts of law.
- In practice, Tajikistan's laws are often contradictory. This law defines the hierarchy of legislation if there is a contradiction.
- Draft laws in Tajikistan are developed by working groups in the Russian language, but the drafts are submitted to the Parliament and the governments in the Tajik language. Laws and normative acts are approved in the Tajik language. When there are contradictions or problems in the translation, the Tajik text is applied (Art. 38).

I.5.2 Issue Details

- The laws of Tajikistan should correspond and be congruent with the Constitution, and other regulatory-legal acts (Art. 73).
- The formula for determining which legislation is valid if a conflict arises between the Constitution, other laws, regulatory-legal acts of Tajikistan, and international legal acts is defined in Article 75. The hierarchy is as follows: decrees of the President of Tajikistan, resolutions of the Government of Tajikistan, acts of ministries, state committees, and other bodies of state power, local governments, self-government settlement and villages. Presidential decrees and government resolutions that contradict the Constitution are not valid.

- If gaps are revealed in the regulatory-legal acts, the officials in the rulemaking bodies which approved the acts must update and amend them to eliminate the gaps. Until such amendments, legal analogy and analogy of legal rights may apply except in cases of criminal or administrative responsibility.

I.6 LAW OF THE REPUBLIC OF TAJIKISTAN “ON APPEALS OF CITIZENS,” DECEMBER 14, 1996; AS AMENDED BY GOVERNMENT RESOLUTION, MAY 21, 1998

I.6.1 Summary of Main Issues

- This law establishes the legal right of citizens, irrespective of their property, to appeal, or to make application or claims to state bodies, public associations, enterprises, institutions, and organizations, and the procedure and terms of their consideration.
- Appeals of citizens must be considered within a month from the date of their submission; for appeals that do not require additional examination and verification – within 15 days. If the application or complaint requires special verification, additional materials or actions, the director or deputy director of the appropriate body may extend the term for solving the application and claim, but not by more than one month, and the complainant must be notified (Art. 12).

2.0 LAND REFORM LAWS

2.1. LAND CODE OF THE REPUBLIC OF TAJIKISTAN, NO. 498, DECEMBER 12, 1997; AS AMENDED BY NO. 746, MAY 14, 1999, NO. 15, MAY 12, 2001, AND NO. 23 FEBRUARY 28, 2004

2.1.1 Summary of Main Issues

- The head of a *dekhkan* farm can transfer the right to use a land plot to another person. The transfer must be re-registered in accordance with Tajikistan's legislation.
- The Land Code focuses much attention on compulsory acquisition (land takings) but provides limited guidance as to the process of choosing and acquiring land for compulsory acquisition, the permissible purposes for compulsory acquisition, or the process for appealing a land taking.
- Agricultural land can be taken by the state and transferred to another private land user for construction. A new amendment also lets the state take land to provide to subsidiary farms, and if land is taken for that purpose (and other specific public uses) the person whose land is taken does not receive compensation for lost production.
- Local governments have great power in relation to land allocation, land withdrawal, and land relations.
- The government, not the Parliament is responsible for establishing land tax rates.
- The Land Committee has the right to resolve land disputes.

2.1.2 Recommendations

- Rather than allowing *ad hoc* acquisition of privately held land, a procedure for land use planning and zoning should be established. Compulsory acquisition should occur as a last resort, for very specific public purposes, and only with judicial approval.
- The Land Code should definitively state that land rights holders have the right to purchase and sell their lifetime inheritable right to land. This will remove the state's role in private sale of land.
- Provide for regulations governing the purchase and sale of agricultural land, including a model contract.
- For any land taking, provide compensation for all losses.
- Consider establishing a land court to hear land disputes, or a process of third party arbitration. Currently legislative, enforcement, and judicial power are all with the Land Committee.

2.1.3 Issue Detail

- a) Land is in the exclusive ownership of the state (Art 2).

Agencies responsible for land

- i) The Republic of Tajikistan

The government is responsible for determining land tax and land rental rates (Art. 5).

ii) The Land Committee

The Land Committee is responsible for developing regulatory legal acts on state control of land relations (Art. 6(e)); developing the procedure for setting land tax rates, and rates for economic losses and penalties (Art. 6(h)); registration of land use rights (Art.6(i)); and resolution of land use disputes (Art. 6(m)).

iii) *Oblast Khukumat*

Oblast Khukumats are responsible for allocation and withdrawal of land plots and individual small holdings (Art. 8 (b)); registration of land use rights and land lease agreements (Art. 8(d)); regulation of small holdings and individual part-time farms (Art. 8(e)); control over use and protection of lands (Art. 8 (f)); and approval of land tenure documents concerning works on land under their jurisdiction (Art. 8 (g)).

iv) *Rayons*

Rayons have responsibility for allocation of land plots (Art. 7(c)); control over the use and protection of land (Art. 7(d)); and submission to local authorities on allocation and withdrawal of land rights (Art. 7 (a), (b)).

b) Change of Use

Changing the use of a land parcel requires a government order (Art. 9).

c) Terms of Use

- Personal subsidiary farms and state and cooperative agricultural enterprises can hold land in perpetual use (Art. 11).
- Natural persons or collectives, citizens operating a *dekhkan* farm, and persons with small holdings can hold land in lifelong inheritable use. If land is inherited, it must be re-registered (Art. 12).
- Fixed short term land use is up to three years and fixed long term land use is 3-10 years (Art. 13).
- Land can be leased for up to 20 years (Art. 14).

d) State Certificate of Land Use Right and Registration

State land use rights must be registered by the Land Committee and its local offices (Art. 15). A certificate is required for perpetual use, limited use and lifelong inheritable use (Art. 17 (a)). Leases are subject only to registration in the Land Use Registry (Art. 17). Land use rights are valid from the moment of receipt of the registered land use certificate.

e) Assignment of Land

Foreign citizens and legal persons can be assigned land for up to 50 years (Art. 25). Local authorities (*rayons* and cities), in agreement with the Land Committee, may allocate land plots up to 10 hectares in size for perpetual or limited use. Oblast Khukumats can be allocated up to 20 hectares of land. The Republic of Tajikistan can allocate any size and any category of land (Art. 26) for long term or perpetual use in agreement with local authorities and the Land Committee.

f) Withdrawal or Confiscation of Land

Land can be taken by the government for a public purpose or for private non-agricultural needs, with compensation. Land can also be confiscated without compensation if it is taken for a cause listed in the law (Arts. 29-31; Arts. 37-48). Natural persons or legal persons that want a land plot for purposes of construction apply to the local authorities. The local authorities and the Land Committee make a decision, and at that point they can confiscate the land if they provide compensation for losses (Art. 31).

Losses, including loss of profit, are to be paid by the person or legal entity who benefits from confiscation for a non-agricultural purpose, infringes on land users' rights, or causes waste and deterioration of land through his or her activities (Art. 41).

If land is taken from a natural person for a public purpose, an equivalent land plot must be assigned to that person; housing or other buildings must be re-built, in addition to full compensation for all losses, including lost profit. If land is taken for a public purpose from a legal person, the housing or other construction must be re-built, and all other losses, including loss of profit must be fully reimbursed. State and public needs are not further defined. It is unclear how full compensation is determined and there is no process for involving the landholder (Art. 48).

Even though a land plot is provided, no compensation is available for losses to agricultural production and forestry land if the land is confiscated for the following "state or public purposes," (Art. 48):

- For small holdings (subsidiary plots);
- For cemeteries;
- For water projects and land improvement in the case of development of virgin land or reconstruction of irrigation and collection drainage;
- For schools, boarding schools, or children's home and health institutions;
- In other cases, as established by the Government of Tajikistan.

Rights to land can be terminated for many reasons, including irrational use, non-use for agricultural production for one year, or for non-agricultural purposes for two years (Art. 37(h)), or regular violation of the land legislation (Art. 37). A decision on termination of land rights is made by the local executive body upon recommendation by the Land Committee (Art. 39). The procedure for withdrawal involves a penalty first and also a warning on how to eliminate the violation. If the violation is not rectified, the Land Committee may propose that the land right be terminated (Art. 40). No time frame is provided for this decision, nor is there a process for appealing the initial violation or decision to withdraw. No specific proof is required.

g) Land Disputes

Land disputes are settled by the Land Committee and its local bodies (Art. 47).

h) Transfer of Land Use Rights

Heads of *dekhkan* farms can transfer the right to use a land plot to another person (Art. 70).

i) Allocation of Land Plots to New Families

Some subsidiary plots of land can be divided if they are large enough for a newly created family. Otherwise, a newly created family, if registered with the djamoat, can receive land from the special land fund or other land held by the djamoat (Art. 71(1)).

2.2 LAW ON LAND REFORM, NO. 594, MARCH 5, 1992; AS AMENDED BY NO. 1005, AND NO. 134, JULY 21, 1994, NOVEMBER 4, 1995, AND MAY 5, 1997

The Law on Land Reform first described the process for land reform and farm reorganization.

2.2.1 Summary of Main Issues

- The *khukumats* have unchecked power to make decisions related to land reform and the distribution of land. This law provides limited direction, criteria, or procedure for carrying out the land reform.
 - The process for withdrawing land for the Land Fund has no procedures, is not transparent, and provides no compensation for former land users.
 - The *khukumat* has the right to make unilateral decisions regarding distribution of land from the Land Fund.
 - The reorganization of collective and state farms requires *khukumat* approval.
- Land withdrawn for the Land Fund is withdrawn without a court order and does not require notice or an opportunity for a hearing. The Land Fund is administered by the *khukumat*.
- Most state and collective farms can be transformed into *dekhkan* farms, cooperatives, or lease collectives, but individuals or enterprises who want such land must first petition the *khukumat*.

2.2.2 Recommendations

- Establish a meaningful and transparent process for governance of the Land Fund and for local land use planning.
- Using legislation, require that the Land Fund be managed by a commission including village leaders, non-governmental organizations (NGOs), and farmers' groups and associations.
- Revise the existing law so that the *khukumat* is no longer responsible for decisions related to withdrawal of land from a former collective or state farm.

2.2.3 Issue Detail

a) Goals of the Land Reform

The goals of land reform are to create different economic forms for agricultural enterprises, to increase agricultural production, and to allow individuals choices related to their land holdings and land use (Art. 1), (Art. 2).

b) Implementing Agents

Local (*rayon*) governments (*khukumats*) were vested with the right to manage the land reform, establish a Land Fund, and make decisions about how the land would be distributed. The *khukumats* and the Land Tenure Service of the Ministry of Agriculture (MOA) were responsible for transfer of the land to private citizens and enterprises. The functions of the land tenure service were later transferred to the newly created Land Committee. The Land Committee is responsible for state registration of land rights, monitoring of lands, implementation of land-tenure, surveying, valuating and mapping land (Art. 19). *Khukumats* are responsible for decisions related to the land reform based on material provided by the Land Committee (Art. 5).

c) Land Registration

Article 20 provides that citizens of Tajikistan who hold land use rights for the purposes specified in Article 48 of the Land Code will be given state certificates for the lifetime inheritable right of landowning (land plots). Notably, this Land Code article number no longer refers to this list and the cross-reference should be updated. When documents for subsidiary farms are registered, the land plots belonging to individual members of the subsidiary farm should receive a state certificate for lifetime-inheritable possession (Art. 20).

d) Right to transfer

A member of a subsidiary farm shall have the right at her own discretion to transfer, for payment or gratuitously, to other persons the constructions and plantings on the land plot. The consent of a partnership or enterprise is not required.

e) Special Land Fund

The Land Fund is made up of unused, devalued, or irrationally used agricultural land, reserved land, unforested forest land suitable for agriculture, and other land of the former state and collective farms that has not been used in agricultural production (Art. 8). The Land Fund was created by and for the *khukumats* for the purpose of distribution to people who wanted to start a dekhkan farm; individual, part-time farmers (subsidiary farms); cooperatives; and part-time farm land for industrial or enterprise workers.

The Land Tenure Service (now the Land Committee) determines which land is unused or irrationally used, and sends the information to the *khukumats*, who then decide which land to withdraw for the Land Fund (Art. 10). The consent of landowners is not required prior to withdrawal of land use rights, and the land user must go to court to contest the decision (Art. 11). Former land users have a priority for receiving land from the Land Fund (Art. 12). Priority for distribution of the land goes to *dekhkan* farmers, part-time farmers, and household garden plots. Priority is also given to people with agricultural knowledge and qualifications (Art. 12). See also Resolution on the Order of Creation and Distribution of a Special Land Fund, October 1, 1993, No. 499 and Regulation No. 499.

f) Redistribution of Agricultural Enterprise Land and Land Privatization

Sovkhoz (state farms) and *kollektiv* (collective) farms can be restructured into *dekhkan* farms, lease collectives, or agricultural cooperatives (Art. 13) with the exception of state farms that were engaged in specialized production such as seed farms and livestock breeding farms (Art. 15). Land is distributed to members of the farms based on the amount of land in the farm. The *khukumat* makes decisions regarding distribution of the land plots. The *djamoats* (village leaders) decide on assignment of land plots within the borders of the rural settlements (Art. 17).

Enterprises or individuals who want land from the enterprise must petition the *khukumat*, who is required to make a decision within one month (Art. 18).

2.3 “RESOLUTION ON THE ORDER OF CREATION AND DISTRIBUTION OF A SPECIAL LAND FUND,” NO. 499, OCTOBER 1, 1993

2.3.1 Summary of Main Issues

- This resolution reiterates what land will be used for the Land Fund and who controls it, but it also further defines some of the terms used.
- Unused lands are lands that are ruined and unusable or lands that are left fallow.

- Irrationally used lands include all types of agricultural land where the productivity level is lower than a standard indicator identified by a cadastral valuation, as well as lands that are used irregularly or in violation of regulations.
- Disagreements are resolved by the *khukumat*.
- The *khukumat* decides the size of each plot.
- Lands are first allocated to citizens for *dekhkan* farms and as subsidiary plots, with a priority right to citizens living in the area with agricultural skills and experience. The priority for former land users no longer exists in this resolution. See Land Reform law.

2.4 REGULATION ON PROCEDURE ON FOUNDATION AND ASSIGNING OF SPECIAL LAND FUND,” NO. 499, OCTOBER 10, 1993

2.4.1 Summary of Main Issues

- Individual citizens may withdraw from *kolkhozes*, *sovkhozes* and other agricultural enterprises and create *dekhkan* households using the lands of the Land Fund (Art. 1 (4)).
- The size of the land plots allocated will be determined based upon the number of household members and the farm’s specialization.
- Land can be leased from the Land Fund. An agreement is signed between the *khukumat* and the head of the *dekhkan* household.
- To receive land from a *kolkhoz* or *sovkhoze*, the head of the *dekhkan* farm must apply to the board of the *kolkhoz*. The application must be processed within one month.
- The decision then goes to the *khukumat* for further processing and decision making (Art. 4 (1-4)).

2.5 GOVERNMENT RESOLUTION, “ON ALLOCATION OF LAND PLOTS,” NO. 26, JANUARY 6, 1997

2.5.1 Summary of Main Issue

This resolution provides a list of collective farms, state farms, *dekhkan* farms, ministers, departments, organizations and enterprises that will receive land plots, as well as the farms from which they will receive the land plots, and the number of hectares received.

2.6 PRESIDENTIAL DECREE “ON EXERCISING THE RIGHT TO LAND USE,” NO. 1021, JUNE 22, 1998

2.6.1 Summary of Main Issue

This decree states that a land share certificate will certify the right to use land. It also states that people with farm plots, household land plots, personal subsidiary farms and *dekhkan* farms have the right to receive a land certificate from the Land Committee.

2.7 ON MEASURES OF FULFILLMENT OF PRESIDENTIAL DECREE, “ON EXERCISING THE RIGHT TO LAND USE,” NO. 244, JUNE 27, 1998

2.7.1 Summary of Main Issues

- Pursuant to Presidential Decree 1021, this decree approves the forms for the land use right certificate, requires the government to make, issue, determine the price of, and register or re-register the certificates.
- In addition, the decree calls for the Land Committee, Ministry of Agriculture, and State Property Committee, together with local governments to begin reorganization of the agricultural enterprises into *dekhkan* farms and associations of *dekhkan* farms. Here, there is no mention of other forms of enterprise organization

2.8 RESOLUTION OF TAJIK GOVERNMENT, “ON SIMPLIFIED PROCEDURE FOR DETERMINATION OF LAND SHARE AND REGISTRATION, NO. 30, FEBRUARY 4, 1999

2.8.1 Summary of Main Issue

This resolution provides that every member of an enterprise has the right to receive a land share, not only those who want to set-up a *dekhkan* farm or other farm enterprise. It also states that the Land Committee and its local bodies will determine the size of a land share. The resolution approves a procedure for this determination, but the procedure still requires approval of the local *khukumat*.

2.8.2 Issue Detail

- This procedure is in accordance with Article 68 of the Land Code (which was recently deleted) and is as follows:
 - The enterprise prepares a list of workers who have the right to receive a land share.
 - The list of shareholders is approved by the general meeting or by the enterprise council through the minutes.
 - The list of shareholders is then sent to the district Land Committee for determination of a land share for every member of the establishment.
 - The *khukumat* still must approve the size of the land share.
 - A certificate for every land share is given by the *khukumat* to each shareholder who is simultaneously registered with the Land Committee.

2.9 REGULATION ON PROCEDURE AND ISSUANCE OF CERTIFICATES OF LAND USE RIGHT AND ENTITLEMENT TO A LAND SHARE, NO. 389, SEPTEMBER 4, 1999

2.9.1 Summary of Main Issues

- This regulation describes the standard appearance of a land share certificate, including the type of paper to be used, and the number of copies required.

- The Land Committee must register the certificates for the right of land use at the regional level (Art. 9).
- The borders of the land must be demarcated (Art. 6).
- The certificate for the land use right can be issued to the managers of newly formed enterprises, organizations and establishments, and also to citizens by the Land Committee (Art. 7). If the certificate is issued to an enterprise, no list of members is required on the certificate. If the certificate is issued to the head of a *dekhkan* farm, the members of the family (farm) are to be listed.
- The price of the certificate is determined by the government and provided within this resolution and its amendments.

2.9.2 Recommendations

- The costs of the land certificate and registration of the land certificate are extremely difficult to understand and should be simplified.
- Land share certificates should be issued only to individual land share holders (or at the least to families), not to the managers of the farm. All members should be listed on the certificate or there is no record of a land right for individuals.

2.10 PRESIDENTIAL DECREES, “ON ASSIGNMENT OF 50,000 HECTARES OF LAND FOR PRIVATE HOLDINGS OF CITIZENS,” NO. 342, OCTOBER 9, 1995; AND “ON ALLOCATION OF 25,000 HECTARES OF LAND FOR PERSONAL SUBSIDIARY FARM OF THE CITIZENS,” NO. 874, DECEMBER 1, 1997

2.10.1 Summary of Main Issues

- Land was allocated by Presidential Decree to supplement household plots and was distributed according to family size and the size of the existing household plot. The term of assignment was five years.
- Presidential land assignment varies by *rayon* and is assigned by the Land Committee, *khukumats* of the district, and the village *djamoat* (head).
- Land is farmed independently.
- The Land Code sets a maximum household plot size, which includes the land under structures.

2.10.2 Issue Detail

- Presidential land was to be distributed first to families who had less land per capita in their household plots than others (Art. 6).
- The plots were not to be distributed to persons who are members of private farms, or who work at cooperatives or small enterprises (Art. 7).
- Presidential land plots are not to be transferred to any other person (Art. 9).

2.11 “ON PROGRESS OF FULFILMENT OF TAJIK GOVERNMENT RESOLUTION NO. 1997 AS OF 1.12.1997, ‘ON ASSIGNMENT OF 25.000 HA. TO PRIVATE HOLDINGS OF CITIZENS,’ NO. 28, FEBRUARY 4, 1999

2.11.1 Summary of Main Issues

- Specific individuals are admonished for not implementing the 1997 Presidential Decree. These individuals are to be accountable for implementing it the resolution.
- Provides that the Land Committee should provide citizens with land certificates pursuant to Presidential Decree, “On realization of the right to land use,” No.1021, June 22, 1998.
- Provides that the Ministry of Agriculture and the Academy of Agricultural Sciences should develop recommendations on increasing crop production.

2.12 REPUBLIC OF TAJIKISTAN, LAW ON SUBSIDIARY FARMS, NO. 47, DECEMBER 8, 2003

2.12.1 Summary of Main Issues

- A subsidiary farm is defined as one that is based on the work of an individual or the members of his family in order to produce agricultural products and satisfy their needs for foodstuffs and other needs. Members of a subsidiary farm must cohabitate. The activity on management of the subsidiary farm shall not relate to business activity.
- Foreign citizens and urban citizens also have the right to land in order to set-up a subsidiary farm. The land should come from the Land Fund.
- This law lacks basic detail on what an individual or household can do to receive land for a subsidiary farm. The law refers to the land law for this procedure, but a specific procedure is not in place.
- Dispute resolution is mentioned in this law, but not discussed. There is no evidence of a credible dispute resolution program.
- The procedure for land withdrawal by the state, or for calculation of the appropriate compensation for the property if a member voluntarily departs the subsidiary farm is missing.

2.12.2 Recommendations

- Provide a procedure for requesting and receiving land for subsidiary farms.
- Eliminate article 3(2).
- Develop a procedure for withdrawal of land, and cross-reference the procedure in this law.

2.12.3 Issue Detail

a) Creation and Organization of Subsidiary Farms

According to Article 4, citizens gain the right to manage a subsidiary farm after they acquire the land in the procedure established in the Land Law. Notably, the procedure provided under Articles 11 & 12 of the Land Code is slim – these articles only state that land can be distributed for perpetual or life-long

inheritable use. They do not state how land may be allocated, the size of the plots, or whether a household can request a plot for a subsidiary farm. It would be advisable to delineate how these land use rights are created and if an individual has the ability to exercise these rights. Article 71 of the Land Code states that the government will design a procedure for distribution of this land.

b) Role of the Farm, Personal or Business?

What is the desired economic role of subsidiary farms? May members sell goods produced on these farms? The law appears to be conflicting. Article 6 states that citizens who manage subsidiary farms can join organizations, and consumer cooperatives to assist with manufacture, agricultural procurement, deliveries, and performance of work. Further, article 14 provides that the agricultural production of a subsidiary farm shall be the property of the members of the farm, and they shall have the right to dispose of the production at their own discretion. Contrast these provisions to Article 3(2) where it states that citizens' activity on management of the subsidiary farm shall not relate to business activity.

c) Dispute Resolution and Land Valuation if state withdraws assigned land plots

Under Article 8(3), the state may withdraw assigned land plots provided that persons either receive land plots of equivalent size and amenities and have their expenses compensated, or they elect to be compensated. No process is required for the state to complete prior to withdrawing land. Nor is any procedure in place for valuation of land and calculating compensation. The law also does not cross-reference other applicable laws on valuation. As a result, this article raises a host of concerns such as procedure for withdrawal, rights of existing land users, adequate compensation for land users, and dispute resolution procedures that are not adequately addressed. For example, Article 20 discusses settlement of disputes relating to subsidiary farms, but it only states that disputes will be settled pursuant to the legislation of Tajikistan.

d) Share Division

- Membership in a subsidiary farm ends when a member no longer cohabits with the other members (Art. 10).
- Property of the subsidiary farm is held in joint ownership. According to Article 12, property partition can be done on demand under the Civil Code. Further if a member terminates her membership, division of the participatory share can also be accomplished. If the plot size of the remaining plots would be too small, then members have the right to compensation equal to the share in the joint property. Similarly, if heirs refuse to manage the farm, then they have the right to receive compensation. This law provides no definition for 'too small' however.

3.0 FARM REORGANIZATION

This section discusses laws and regulations relating to the creation of private farms and the break-up of large-scale farms into smaller, privately-owned parcels

3.1 REGULATIONS PROMULGATED UNDER PRESIDENTIAL DECREE, “ON PROCEDURES FOR REORGANIZING AGRICULTURAL ENTERPRISES AND ORGANIZATIONS,” NO. 522, JUNE 25, 1996

3.1.1 Summary of Main Issues

- The process of farm reorganization is not transparent, and most of the power remains with local government.
- There is no requirement for a general meeting to describe the process of farm reorganization or the other options available to members of the farm.
- During farm reorganization, enterprises can be reformed into *dekhkan* farms, collective or joint enterprises, cooperatives, joint stock ventures, or associations carrying out agricultural production and also providing agro services, supplies, processing, sale etc.

3.1.2 Recommendations

- Local authorities should not have ultimate responsibility for farm reorganization and the regional Land Committee should be responsible only to the state Land Committee.
- To increase transparency, NGOs and community members should be involved in the process of farm reorganization. The farm level commission should include NGOs and members of the reorganizing farm. The observers should participate in the general meetings and assist with education of the farm members.
- More regulations should be promulgated to describe the process of farm break-up where other organizational and management forms (not only *dekhkan* farms) are chosen by members of the farm.

3.1.3 Issue Detail

a) General

- The government creates out a list of farms that will be reorganized.
- During reform of an enterprise, the regulation guarantees that the reform will be public, responsible to the community and provide social justice and protection for enterprise employees (Point 5).
- Social-cultural establishments of enterprises are transferred to *djamoats* (Point 6).

- Inter-farm systems (irrigation and water systems, roads, gas, electric, communication) are transferred to the corresponding ministries and departments (Point 7).

b) Non-land property

A farm level commission is elected at a general meeting and is responsible for distribution of the non-land property. Duties of the farm level commission include inventory and estimate the cost of the property (Point 8). Those who can redeem a portion of the non-land property include (Point 12):

- Employees of enterprises enrolled as enterprise staff at the moment of reformation;
- Pensioners retired directly from the enterprise;
- Persons chosen for elective work of different levels;
- Invalids who became disabled in the enterprise;
- Persons called for active service in Armed forces from this enterprise or organization;
- Persons sent to study or raise his level of skill by the enterprise;
- Other persons according to the decision of the Land Commission.

Enterprise property can be sold on limited preferential terms. If a member voluntarily leaves a newly-formed enterprise, the member is entitled to a property share in the form of money. Assets are entered in a special account of the Ministry of Finance and accounts receivable are entered into state debt (Point 9). The general meeting determines what organizational forms the farm will take, the disposition of movable and immovable property, and fixed and circulating assets (Point 9).

c) Land

- The *rayon* Land Committee is responsible for distribution of the land of the enterprise, and for determining how much land will be put in the Land Fund (Point 20).
- Land is to be distributed among the regular workers in shares (Point 23). The *rayon* land committee will decide the size of the shares. If a worker decides to establish a *dekhkan* farm, she has the right to get a land plot at the rate of her share from the farm's land. The *rayon* Land Committee hears all land disputes. A complainant can appeal a decision to the court.
- To be allocated a land share in kind, the worker of the enterprise must submit an application to the district Land Committee. The district Land Committee must adopt a decision about the borders of the allocated land plot within one month. The location of the plot is decided by a lottery within the contour where the applicant worked in the collective (Point 24).
- Enterprises carrying out scientific, training, or experimental work and elite seed growing farms are not subject to reorganization (Point 28).

3.2 “ON REORGANIZATION OF AGRICULTURAL ENTERPRISES AND AGENCIES,” NO. 1232, JUNE 9, 1999

3.2.1 Summary of Main Issues

- This decree requires that 160 agricultural enterprises and organizations would be reorganized prior to March 30, 2002.

- A State Commission on Reorganization of Agricultural Enterprises is created and the decree calls for *oblast*, city, and *rayon* commissions in accordance with the appendix. These commissions are responsible for reorganization of farms and specific officials are to be on the Land Committee.
- Provides that additional funds should be provided for land surveying and reorganizing enterprises, and for the new position of land engineer in the *djamoats*. The Land Engineers are supposed to settle land and registration questions that arise in the creation of *dekhkan* farms.

3.3 “ON REORGANIZATION OF AGRICULTURAL ENTERPRISES AND AGENCIES, NO. 478, FEBRUARY 2, 2001

3.3.1 Summary of Main Issues

- This decree requires that 120 agricultural enterprises and organizations to be reorganized prior to December 31, 2001.
- Creates a State Commission on Reorganization of Agricultural Enterprises and calls for oblast, city, and rayon commissions. The specific official positions that will be members of the commission are listed in the law.
- Creates an information department in the central office of the Land Committee to prepare information about the quantity and quality of lands and the registration of *dekhkan* farms.

3.4 “ON REORGANIZATION OF AGRICULTURAL ENTERPRISES AND AGENCIES FOR THE PERIOD OF 2002-2005,” NO. 385, OCTOBER 1, 2002

3.4.1 Summary of Main Issues

- Requires the Land Committee, the Ministry of Agriculture, interested ministries and departments, and local governments stage reorganization and privatization of 225 agricultural enterprises and organizations.
- Requires that the Land Committee provide transformed farms with land right certificates.

3.5 LAW ON DEKHKAN FARMS, NO. 48, MAY 10, 2002

This law replaces the original Law on *Dekhkan* Farms of 1992, and is different in many, significant ways.

3.5.1 Summary of Main Issues

- The law defines a *dekhkan* farm as a private, unincorporated family farm. A *dekhkan* farm is not a legal person.
- Members of a *dekhkan* farm have the right to contribute their land to the charter capital of a production cooperative. The farm then becomes the owner of the land, and the individual no longer has a lifetime inheritable right to that land or an automatic right to withdraw the land. When farms reorganize, many farmers are not prepared to farm independently. The farm leaders can take advantage of this situation and require contribution of the land. Theoretically, they should receive dividends, but in most cases this does not occur.

- *Dekhkan* farm members have a right to leave the farm with his share of land without the consent of other members (Art. 17). This provision conflicts with the Civil Code provisions on common and joint ownership.
- The *khukumat* has the power to determine to whom land is distributed from the Land Fund. No criteria or procedural safeguards are elaborated.
- The obligations of *dekhkan* farm members are vague and therefore would allow the government to withdraw land with little or no established criteria. The government has the power to coordinate activities of a *dekhkan* farm.
- Under this law, the *dekhkan* farm can lease out land under specific, narrow conditions.

3.5.2 Recommendations

- Do not allow *dekhkan* farm members to contribute their right to land to the charter capital of a production cooperative in order to protect farmers from losing their land. For early stages of land reform, it is a critical protection to allow farmers to withdraw land that they contributed to a cooperative.
- If members of a *dekhkan* farm form a cooperative, the form of enterprise should no longer be a *dekhkan* farm but rather a production cooperative, falling under the law on production cooperatives.
- Promulgate regulations for the *Dekhkan* farm law that establish criteria and an open and transparent procedure for decisions regarding who gets what land from the Land Fund.
- Create clear guidelines and transparent procedures for government withdrawal of land. Limit government involvement in *dekhkan* farm activity.
- Allow *dekhkan* farms to freely transact with their right to land (lease, sell, mortgage).

3.5.3 Issue Detail

a) Form of Ownership

A *dekhkan* farm is a private, unincorporated farm founded on the work of one person or of members of one family and other persons jointly producing agricultural products. Employed persons are not members of a *dekhkan* farm. The land of a *dekhkan* farm is held in joint ownership (Art. 3-6). One person shall represent the interests of the farm, the Head of the *Dekhkan* Farm (Art. 7). A *dekhkan* farm can be an individual farm, a family farm, or a simple partnership (Art. 6).

b) *Dekhkan* Farm Cooperatives

Members of a *dekhkan* farm can create a legal cooperative based on the property of the farm. The property contributed becomes the property of the cooperative farm (Article 8).

c) Associations of *Dekhkan* Farms

Associations of *dekhkan* farms can be created by a voluntary amalgamation of *dekhkan* farms (Art. 28). The organization will have a constituent agreement and charter, but the *dekhkan* farms in the association will be independent (Art. 28). However, production and business objectives can be centralized (Art. 30).

d) Land Granted to *Dekhkan* Farms

To establish a *dekhkan* farm, a citizen must apply to the regional executive body (*khukumat*). The land will be granted for lifetime inheritable possession (Art. 10). The cadastral and ecological documentation of

the land will be paid for by government budgetary funds, although a land owner can pay for their own land surveys and cadastral work. The *dekhkan* farm must pay for allocation and registration of the land (Art. 10).

Land can be granted either from a collective or state farm (Art. 15) or from the Land Fund (Art. 12). The land granted must either be the average land share of an agricultural organization or the average land share of the Land Fund (Art. 11). For members to receive land from the collective or state farm, the applicant should follow the rules for withdrawal of their land share from the farm. To receive land from the land fund, the applicant must submit an application to the *khukumat* that identifies how they will use the land, the size and location of the land they are requesting, and the total number of able-bodied members of the farm (Art. 14). The *khukumat* is required to make a decision within one month (Art. 14).

e) Government Involvement

An “authorized government body” has the power to coordinate activities and implement government policy on technical aspects, investments, and forecasting of *dekhkan* farms (Art. 9). The government also has the power to withdraw land from a *dekhkan* farm for a variety of reasons and without a court decision (see obligations below). The government withdrawal of land is mentioned only in passing (Art. 17) and no criteria for withdrawal is provided.

f) Rights and Obligations of the Farm and its Members

Dekhkan farms must register with the notary office and the state statistical body and the village *djamoat*. A *dekhkan* farm association must register with the local agency of justice and the local statistical body as well as the village *djamoat*.

Other obligations include efficient and environmental use, payment of rent and taxes, increase production and submit information to local governments, pay for any faults, respect contracts, and not infringe the rights of others (Art. 18). The farm must submit reports on their activity to the state statistical agencies of Tajikistan (Art. 22).

Rights of the farm and its members include: independent management, the ability to lease out the land in case of an inability to farm (defined in the law) and other cases in the legislation, being able to receive indemnification of the costs for increased productivity if the land is withdrawn by the government, being able to receive income from the sale of the products, voluntarily refusing the land, and leaving the farm with a share of land without the consent of other members (Art. 17). If the land has structures or perennials that cannot be removed, the *dekhkan* farm must reimburse the withdrawing member for them. There are special state supports for *dekhkan* farms including free state registration, no charge for water, no charge for opening a bank account, and other privileges (Art. 26).

3.6 “ON MECHANISM OF SETTLEMENT OF DEBTS OF THE REORGANIZED AND REORGANIZING AGRICULTURAL ENTERPRISES AND ORGANIZATIONS,” NO. 1054, APRIL 15, 2003

3.6.1 Summary of Main Issues

- Provides that the debts of the already reorganized and reorganizing agricultural enterprises and organizations should be distributed among *dekhkan* farms and other farms created by the reorganization according to the proportionally allocated share of land.
- Provides that each farm should individually settle their debt to the state-owned enterprises and organizations. The debt includes taxes and other payments, property inventory, and services.

- Requires that the government, together with the National Bank classify these enterprises by the size of the debt per one hectare of the allocated land and determine the terms and procedure on settlement of liabilities, make the appropriate payments to the appropriate budgets, and deal with unrecoverable debt.
- Invalidates Paragraph 9 of the Presidential Decree “On Reorganization of Agricultural Enterprises and Organizations,” No.522, June 25, 1996, which provided that enterprise debt became state debt.

3.7 GOVERNMENT RESOLUTION, “ON SETTLEMENT OF DEBTS OF THE TRANSFORMED AND TRANSFORMING AGRICULTURAL ENTERPRISES,” NO. 1232, DECEMBER 25, 2003

3.7.1 Summary of Main Issues

- Provides for a write-off of a range of internal debts due by farmers as of January 1, 2003 to government agencies. These debts include gas (TJS11.5 million), electricity (TJS10.4 million) and water charges (TJS38.4 million), taxes (TJS40.5 million), and social insurance payments (TJS41.7 million) that amount in total to TJS132.3 million.
- Provides for government organizations and the National Bank and other banks to form a commission and distribute farm debt to newly created farms proportional to the area of the land, taking into account the time the enterprise was founded, the date the debts were accrued and to extend the term of their repayment until January 1, 2007 provided the debts are paid beginning with the 2003 crop according to the schedule of the debt payment and the pledge.
- Asks the National Bank to extend the term of debt repayment on bank credits and the charges accrued prior to January 1, 2007 with payment beginning January 1, 2004, and to write off penalties and bank accrued charges.
- Requests that the term of repayment for debt owed to the Ministry of Finance be extended until January 1, 2010, with payment beginning January 1, 2005.
- Provides that the commissions on reorganization of farms sell farm assets to pay the arrears on wages and 1% of social payments.

4.0 ENTERPRISES

4.1 REPUBLIC OF TAJIKISTAN, LAW ON CONSUMER COOPERATIVES, NO. 583, MARCH 13, 1992

4.1.1 Summary of Main Issues

- Consumer cooperatives are to provide services, inputs, and marketing for their members, and also organize professional training and retraining for personnel, and implement external economic activities. Consumer cooperatives are required to actively encourage social arrangements of villages, build and develop *dekhkan* and subsidiary farms, increase the resources of food and other consumer goods, and improve services for the population.
- This law envisions a hierarchical system of management and organization. Article 5 refers to republican, *oblast*, *rayon*, and individual consumer cooperatives.
- This law should cross reference Article 128 of the Civil Code, “Consumer Cooperative.” Article 128 contains more information about the formation and membership requirements for consumer cooperatives than this entire law.
- The legal framework for consumer cooperatives provides no real power and little operational autonomy. Their activities are severely restricted by the state, or local authorities.
- There are no provisions in the law related to withdrawal from the cooperative and what rights to property those withdrawing hold.

4.1.2 Recommendations

- Limit the functions of a consumer cooperative to economic activities such as services and marketing. A consumer cooperative should not undertake to provide all the services of a former collective farm.
- Eliminate the complexity of the national system of consumer cooperatives and allow cooperatives to start locally.
- Do not include joint stock companies and other types of enterprises that function under a different legal form in the category of consumer cooperatives.
- Limit government involvement in consumer cooperatives and allow the cooperatives to act as independently.
- This law and the Civil Code both lack any reference to a member’s dissociation or ability to voluntarily depart the consumer cooperative. Provide withdrawal procedures in the law and allow those who have contributed land to withdraw their land in-kind.

4.1.3 Issue Detail

- a) Formation and Membership Issues

This law lacks basic formation and membership content. For example, the charter is to be the guiding document for the cooperative (Art. 2). The law references the charter, but does not specify what information must be contained in the charter. Rather, this information is provided in the Civil Code, Article 128. This is awkward and this information should be provided in the Consumer Cooperative law. All other issues relating to the obligations of members are contained in the Civil Code, Article 128.

b) State Control over Consumer Cooperatives and Unions

- State bodies have the “right in case of need to apply to the board of the higher organization for inflicting punishment upon chairmen of boards and other elected employees of consumer companies and unions,” (Art. 7 (5)).
- The power of the consumer cooperatives is circumscribed by the requirement that they closely cooperate with the local *Madjlisis* of People’s Deputies for such things as purchasing agricultural products and raw materials (Art. 8). However, Article 8 does purport to limit state and local governments from interfering with operational decisions, and an agreement is supposed to define the mutual relations of consumer companies and their unions, with local governments.

c) Consumer Cooperatives’ Acquisition of Land Use Rights

- Agricultural land can constitute “property” of consumer cooperatives. Article 10 states that formation of assets of consumer cooperatives includes the fixed contributions of shareholders, revenues from activities and “other sources” not forbidden by law. Article 17 states that consumer cooperatives are required to provide effective and rational utilization of possessed land plots. Additionally, Article 7 states that the state is also to provide the consumer cooperatives and their unions with the right to receive land plots for their possession and use.
- Under Article 12, consumer cooperatives are charged with implementing their activities in villages in cooperation with associations of *dekhkan* farms and other agricultural manufacturers. They are to promote employment of the population, expansion of small enterprises, application of a flexible mode of work, vocational training, and professional development to the staff of consumer cooperatives (Art. 17).

4.2. GOVERNMENT RESOLUTION “ON STATE SUPPORT FOR CONSUMER COOPERATIVES,” NO. 399, SEPTEMBER 22, 2000.

4.2.1 Summary of Main Issue

- This resolution requires that local governments, *oblast* governments, central government ministries, and the National Bank, encourage and support consumer cooperatives, and especially the Tajik Republican Union of consumer societies “*Tajikmatlubot*.”

4.3. REPUBLIC OF TAJIKISTAN, LAW ON PRODUCTION COOPERATIVES, NO. 68, DECEMBER 12, 2002

4.3.1. Summary of Main Issues

- A production cooperative is a voluntary group of citizens joined together on the basis of membership for joint production or other business activities (such as the production and sale of agricultural products) based on their personal labor and also contributions of their property. The founding documents of a

production cooperative may stipulate participation of legal persons. As a commercial organization, the cooperative is a legal person.

- The provisions of the Civil Code relating to production cooperatives should be cross-referenced in this law. There should be no contradictions between the Civil Code and this law.
- The law lacks a dispute resolution mechanism for members who have disputes with the cooperative or its formation. For example, dissenter's rights at formation are not addressed in this law. It is not clear if they have the right to request to opt-out of formation and receive the value of their land shares and other property shares?
- The law does not specifically allow a member of a production cooperative to withdraw a contribution of his land right in-kind. As farms are reorganized, land use right holders should not have to decide to give-up their share of land without the right to later withdraw it, since they are new land right holders and may not fully understand the gravity of their actions. As farms are reorganized, farm managers have a good deal of power and farmers often do not know their rights.
- This law allows a reorganizing farm to keep its current management rather than reorganize into a production cooperative or other form.

4.3.2 Recommendations

- It would be beneficial to cross reference in Article 3 “Legislation on Cooperatives” the relevant provisions of the Civil Code relating to production cooperatives.
- Dispute resolution should be highlighted and analyzed in light of existing production cooperatives – what type of dispute resolution services are needed, how can members have disputes resolved equitably, amicably, and expeditiously?
- Contributions of land use rights to a production cooperative should be allowed with the right to withdraw the land in-kind upon leaving the cooperative. Rules can be created related to the timing of the withdrawal and mortgage of the land use rights.
- Eliminate Article 8 that allows reorganizing farms to keep their current management form. At reorganization, the farm should be organized into an enterprise form allowed for in the Civil Code.

4.3.3 Issue Detail

a) Integration with Existing Laws

It is confusing that the provisions of the Civil Code on production cooperatives are similar, yet slightly different from the provisions of this law. These two documents should be fully congruent with one another. See for example, Art. 2 & Civil Code Art. 118; or Art. 6-7 and Civil Code Art. 119.

b) Formation of Production Cooperatives

- Participants from former agricultural organizations have the right to continue with their existing management structure (adjusted to new laws), or they can reorganize and create a cooperative (Art. 8). It is not clear how much choice any individual has in continuing with the old organization or opting not to join a cooperative. Notably, per the basic principles of these cooperatives, membership is to be voluntary (Art. 5).
- At formation, it appears that items of the production infrastructure that are difficult to divide are automatically excluded from division if more than one cooperative is formed (Art. 8). All of the

cooperatives are to use the indivisible property, but no clear guidelines for coordinating that use are provided.

- Under Article 21, the right to land use can be a fixed contribution from a member. These fixed contributions are requirements set forth in the charter before someone can become a member. Thus, it appears that a former member of an agricultural organization would be forced to give her right to use land to the production cooperative upon formation if so required by the charter. According to Article 20, a fixed contribution is just one of the sources of property collected by the production cooperative upon formation, and assets are to be divided into shares according to the charter. Thus, a member leaving the cooperative would have the right to demand his or her share (but not necessarily in-kind).

c) Management

Article 15 (relating to the format of general meetings) does not require that meetings be held regularly, nor does it provide a process for members to request general meetings, or notice requirements for those meetings. These items also are not addressed in the charter (Art. 7).

d) Voluntary or Involuntary Departure from Production Cooperative

A cooperative member is permitted to leave the cooperative and receive disbursement per this law and the charter (Art. 11). A member who voluntarily leaves the cooperative is to be paid the value of his share or given property corresponding to the share. (Art. 13). Any land use rights formerly held by the member should be returned in-kind to the departing member.

e) Dispute Resolution

- Cooperative members are supposed to have recourse to the court for protection of their membership rights. (Art. 11). It would be advisable to provide more information about the dispute resolution process and consider what body would most effectively mediate such disputes.
- When a cooperative suffers losses, members are liable according to their labor contribution. (Art. 24). This is reasonable, but could be problematic if people are not truly voluntary participants in the production cooperative, or if dissenters do not feel they have an adequate forum to express their dissent prior to joining a production cooperative.

4.4 REPUBLIC OF TAJIKISTAN, “ON STATE PROTECTION AND BUSINESS SUPPORT IN THE REPUBLIC OF TAJIKISTAN” NO. 46, MAY 10, 2002

4.4.1 Summary of Main Issues

- This law is not clear about what responsibilities local governments bear for support of entrepreneurial participants, although it requires that they be responsible for their protection and support.
- There does not appear to be an implementing body or any reference to implementing procedures for the many provisions of this law. If this body or implementing procedures do exist, they should be cross-referenced.

4.4.2 Recommendations

a) Allocation of Governmental Responsibilities

It would be preferable for this law to be more clear about what percent of local government budgets are required to be devoted to entrepreneurial support. Further, it would be advisable for the Tajikistan government to try to equalize the kinds of support offered at the local level so that different geographic areas are not providing widely varying monetary and technical support for entrepreneurs and farms.

b) State Registration Requirements

A review of the implementation procedures for these registration requirements would be helpful, as well as field research into how these requirements are regarded by farmers.

c) Implementation

Create implementing regulations for this law.

4.4.3 Issue Detail

a) Allocation of Governmental Responsibilities

What kind of fiscal and oversight responsibilities do local governments bear for support of entrepreneurial participants, and how can local support be made consistent throughout Tajikistan? The central government has primary power to fund entrepreneurial participants, and the powers not granted to the central government are reserved for local governments ‘in accordance with their powers’ (but these powers are not enumerated in this law). (Art. 5). Local governments are also required to use their budgets to provide supplementary measures to protect and support business.

b) State Registration Requirements

Are the requirements that individuals register with the state in order to operate and receive support fair and reasonable in light of the educational levels of farmers? Articles 8 and 9 discuss the registration requirements for entrepreneurial participants, as well as the fact that no other registration requirements may be imposed except those provided for in this law.

Registration is implemented by the tax bodies, and individuals must submit an application, description of entrepreneurial activity, documents and payment for a patent. (Art. 9). The payment rates are to be centrally set. Several issues arise from these registration requirements: (1) Are individual farmers aware that they must register? (2) Is it easy for a small, peasant farmer to register? (3) Is the fee reasonable? A review of any implementation procedures for these registration requirements would be helpful, as well as field research into how these requirements are regarded by farmers.

c) Implementation Procedures

There does not appear to be an implementing body or reference to any implementing procedures for the many provisions of this law. There are no references to the state agencies that will implement these provisions. Further, many different types of laws and legislation are implicated (concessionary terms, favorable tax, customs and investment conditions, simplified taxation, etc.), but no entity is provided to oversee coordination of this law’s requirements. (Art. 23).

Notably, assignment of land plots and state property on simplified conditions is required too. per Article 23 of this law, but again, no implementation guidance.

Lack of implementation procedures is a problem throughout this law, but is especially notable in Chapter VI’s enforcement ‘procedures’ – where state bodies or officials whose actions result in impossibility of implementation of free entrepreneurial activity are to be held judicially responsible, with no guidance as to how an aggrieved person might undertake such enforcement.

5.0 TRANSACTIONS

Provisions related to transactions are spread throughout the land legislation (see for example, the Civil Code, Land Code, *Dekhkan* Farm Law). This section deals only with legislation that is specifically devoted to transactions.

5.1 REPUBLIC OF TAJIKISTAN, LAW ON LEASE, NO. 126, NOVEMBER 4, 1995

5.1.1 Summary of Main Issues

a) Lack of Integration with other Laws

The Lease Law is not properly integrated with the Land Code and Civil Code provisions applicable to leases. In some cases, the information is contradictory.

b) Leasing is overly complex, over-regulated and not transparent.

The complexities and lease terms required by this law likely restrict the lease market. The legal framework for leases discourages the entry of unsophisticated parties into the market. This is detrimental to small farmers who could benefit by increasing their land holdings, or access to leased capital inputs through a functional lease market.

Entering into a lease for land, natural resources, or inputs should theoretically be an easier process than entering a purchase and sale agreement. Use of leases should facilitate access to inputs that an individual or entity could not otherwise afford, or if economic conditions change, allow withdrawal from the lease without long-term financial obligations. This law however, structures the lease market like a highly regulated purchase and sale market. Thus, the benefits of a functional lease market cannot be realized.

- Rental rates for land are centrally set. For leased collectives they are set based upon the average expected profits from the land. This type of centralized control of rental or lease rates hinders the expansion of the agricultural land lease market since parties are not free to contract for themselves.
- Restrictions on lease terms, and defaults for automatic extension of leases represent excessive government interference in lease deals.
- Land leases must be approved by Land Committees local governments. As a result, local governments have tremendous control over whether a lease contract is approved.
- No process is provided in this law for a natural person to use when seeking to lease land.

c) Rights of Dissenters or those Leaving Collectives or Leased Enterprises

If a leased enterprise is formed from property of farms, it is at the enterprise's discretion to determine what rights arise at voluntary withdrawal of a member for remuneration of their time and property contributions (Art. 22). Contrast Article 22 to Article 275 of the Civil Code, where a worker who has terminated labor relations must be paid the value of her investment. The provisions for sub-leases of agricultural collectives are also not directly addressed in this law.

5.1.2 Recommendations

- Ensure that provisions in the Lease Law are consistent and properly cross referenced with applicable provisions of the Land Code and Civil Code.
- The lease market should have less government oversight and it should be more freely functioning. Rental rates, lease terms, and plot size should not be restricted or controlled by local governments.
- For leased enterprises, leased collectives, or sub-contracts within a legal entity, the provisions for payment of shares to departing members should be clearly provided, or the primacy of the Civil Code's provisions on point should be noted in the Lease Law.
- A member of a leased enterprise, formed from property of farms, should have the right to withdraw his land in-kind, at least for the first several years after farm reorganization. Otherwise, during reorganization, members could lose all their rights to land without really understanding what those rights are.
- The rules related to lease enterprises are heavily weighted toward government involvement in what is essentially a private business.

5.1.3 Issue Detail

a) Lessors

- The right to be a lessor remains with the Assembly of People's Representatives or *Majlisis* of People's Deputies (Art. 4(2)); or with *kolkhozes* and *sovkhozes* who are permitted to lease the land they have acquired (Art. 4(3)).
- Individual farms, or *dekhkan* farms are not mentioned as potential lessors in Article 4. However, in Article 19 of the Land code, it states that primary land users have the right to "lease out" the land plot.

b) Lands Available for Lease

Rayons have primary responsibility to allocate land plots for lease from the land reserve and lands for agricultural needs in a size of up to 10 hectares (Art. 26, Land Code). Authorities of the Gorno-Badakhshan Autonomous Oblast shall be given lands from the land reserve and agricultural lands in a size of up to 20 hectares for lease.

c) Lease Contracts

- The lease formation requirements provided in Article 7 are stringent; although it is unclear from the Lease Law, what portions of Article 7 are applicable to land leases. Land is not mentioned explicitly in Article 7. According to Article 7, a lease contract must specify certain categories of information, including, but not limited to, the cost and depreciation of the leased property in the lease document, and other calculations that would not necessarily be required by any two parties to actually commence a lease.
- Lessees who make improvements to fixtures (with a lessor's permission) have the right to compensation for improvements – but there is no specification in Article 9 as to how this compensation right is enforced. For leases of enterprises (which may include land) and "other uniform property complexes," the lessee has a right to compensation for fixture improvements whether or not the lessor approves, however, again no specification as to how this compensation request might be enforced. While lessors can disclaim a lessee's right to compensation in the lease contract, without such a provision the lessor can be liable for compensation for any improvements to

the leased property, with no limits provided. This type of provision likely discourages individuals and entities from becoming lessors.

d) Purchase of Leased Property

i) Agricultural Land

No provisions in Article 10 mention agricultural land. Since all land is the property of the state, and land users have the right to perpetual use of land, limited use of land, or lifelong inheritable tenure, it appears that these lease-purchase transactions do not apply to land.

ii) Non-Agricultural Land Property

Any lessee (with lessor's consent) may purchase leased property (Art. 10). Any disputes relating to the conversion of a lease into a purchase are to be resolved by the court. According to Article 10, if state property is subject to a lease and subsequent sale, the Land Committee or the local government is given the power to value the property subject to purchase.

e) Lease Terms

- Article 12 specifies that for natural resources, enterprises (which per Civil Code Art. 144 may include land parcels), buildings, and constructions, the lease term is 5 years.
- Leases for land cannot be for a term of less than one crop rotation, because completing leases requires using “scientifically grounded crop rotation.” (Art. 12)
- Lessees have the right to renew at expiration of lease term (Art. 12) This right to renew is difficult to reconcile with the fact that if one of the parties refuses to continue with the lease at end of term, it is not considered renewed. (Article 12(3). Leases automatically extend for another term if no party takes action upon termination of a term. If a lease extends for another term, lease terms can be updated (Art. 12).
- Article 14 of the Land Code needs to be cross-referenced. It states that land plots “shall be assigned for lease for a period of up to 20 years.”

f) Lease Termination

Under Article 20 of the Land Code, secondary land users are entitled to be indemnified for early suspension of the lease agreement for the cost of land improvements made at their expense.

g) Supervening Illegality

Under Article 15, the lease is valid for the whole term, even if after the lease has commenced, legislative changes alter the lessee's situation. This seems draconian, if it is desirable that the rule of law be upheld.

h) Leased Enterprises

Article 16 provides for the creation of a leased enterprise from a former state-owned enterprise where the leased enterprise receives the property of the state enterprise. These leased enterprises do not contemplate farming as an enterprise, but rather, they are former state and collective farms that change form to be leased enterprises. However, in Article 22, the law provides that leased enterprises can be created on the basis of the lease of farm property or other divisions of the state owned enterprise – but state permission is required.

Activities of these enterprises are more proscribed than in general leases. Leased enterprises must use prices established for state owned enterprises (Art. 18). There are also restrictions on how they raise and use profits (Art. 19). Labor relations are also regulated (Art. 20).

Article 21 discusses the property of a leased enterprise. A cross reference to Civil Code Article 276, “Property of a Leased Enterprise,” should be provided. The Lease Law is more detailed than the Civil Code.

Members who contribute property to the leased enterprise can be given securities for their contribution, as well as dividends on the securities. However, the issuance of securities to the working collective is discretionary (Article 21(3)). A member can also receive cash, but that is subject to the leased enterprise charter. Article 21(3) states that the charter contains a procedure for paying dividends to dismissed employees.

i) Citizen Leases

- Individuals are granted the right to lease production means and other property, but they are required to make contributions to the state budget for their insurance (Art. 26(1)).
- For land and natural resource leases, entities must consider an individual’s application within one month of a lease request. Any disputes arising from signing a lease for land or natural resources leases are to be handled by the court (Art. 26(2)).
- For individual leases, construction is not permitted on the leased land. This prohibition on construction is unnecessary – for if a fixture is constructed, the lessor would keep it if it could not be removed from the property at lease end without damage (Art. 27).
- Other services for agricultural lessees are permitted if a contract is made through the requirements set out for collective and state farms (Art. 27).
- Independent tenants are permitted to establish cooperative relationships with state and collective farms. (Art. 27(5)).
- Lessees may receive loans to enhance production development, and local *Majlises* can allocate funds to lessees on a returnable or gratuitous basis (Art. 28).

j) Lease Sub-Contracts of a Legal Person

- These sub-lease contracts provide a means for state, and collective enterprises to organize and pay individual workers, groups of workers and leased collectives (Art. 29(1)).
- Any new workers must be approved by the lease collective (Art. 29(3)). Further, for lease sub-contracts in the agricultural sector, even persons who are not members of the lease collective may be hired. (Art. 29(4)).
- Required sub-lease terms are the “size” and “procedure” for reimbursement by the lease collective of expenses and payments (Art. 30(3)).
- State and collective farms can contract with lease collectives for the right to dispose of output and to use profits raised for salary and taxes (Art. 30(6)).
- Rent payments for land and livestock are set by calculating average expected profits (Art. 31). The rental payment for using property assigned to the lease collective is calculated according to the sub-lease agreement, and can be modified if conditions change (Art. 31(1)).
- In Article 31, if prices and other economic conditions change, the lease payment for land or livestock can be renegotiated by agreement of parties. Contrast this to Article 15 for general leases, where supervening illegality does not permit a lessee to escape monetary obligations.

- Leased collective profits are not be subject to withdrawal (Art. 32(1)). This is overly restrictive, because if all expenses are paid, the collective should be able to decide that the profits could be withdrawn.
- In the agricultural sector, rescission of the agreement is permitted after completion of an agricultural year, so long as no less than 2 months notice is given (Art. 33(2)). Disputes are referred to the Economic Court (Art. 33(2)).

5.2 REPUBLIC OF TAJIKISTAN, “ON LAND VALUATION,” NO. 18, MAY 12, 2001

5.2.1 Summary of Main Issues

a) Valuation for Fixtures or Buildings

Article 5 states that the object of valuation is the land plot, and that buildings or fixtures situated on them are not included in the valuation. What is the purpose of not including a calculation for the value of the buildings or fixtures upon the land? This issue should be clarified.

b) Judicial Review

Judicial review is provided in Article 12 for disputes relating to state cadastral valuation. Is this appropriate? Should there be an internal administrative review, or some form of alternative dispute resolution available prior to allowing persons or entities recourse to the judicial system?

5.2.2 Issue Detail

a) State Cadastral Valuation Financing.

Pursuant to Article 9, the cadastral valuation is financed at the expense of the state budget. Since there are problems with availability of funds, it might be advisable to have a simpler cadastral valuation system and to charge users nominal fees to receive the benefits from cadastral valuation.

5.3 GOVERNMENT RESOLUTION, “ON MEASURES TO IMPROVE SALES PROMOTION OF DOMESTIC GOODS IN THE EXTERNAL MARKET,” NO. 237, JUNE 8, 2001

5.3.1 Summary of Main Issues

- Requires state monitoring of cotton exports and imports.
- Provides that sale of cotton and cotton production inside the republic and to external markets shall be implemented by the Tajik Universal Commodity Exchange.

5.4 REPUBLIC OF TAJIKISTAN, ON INSOLVENCY (BANKRUPTCY), NO. 46, DECEMBER 8, 2003

5.4.1 Summary of Main Issue

The provisions of the Bankruptcy Law are applicable to individual farmers, entrepreneurs and legal persons, but not state enterprises (Art. 1). The law allows for certain property to be kept out of bankruptcy but it is not clear what property is included in this provision, since it refers to property associated with the person.

5.4.2 Recommendation

Clarify that the home of a debtor and a certain amount of her personal property are exempted from bankruptcy. This is especially necessary since *dekkhan* farms are individual entities and therefore, their owners personally liable.

5.4.3 Issue Detail

a) Cross-References to Civil Code

The following Civil Code provisions relating to bankruptcy, and should be cross-referenced and made fully congruent with the Bankruptcy Law provisions.

- Article 26: Bankruptcy of an Individual Entrepreneur
- Article 57: Liability of a Legal Person
- Article 62: Liquidation of Legal Person
- Article 65: Satisfaction of the Claims of Creditors
- Article 66: Insolvency (or Bankruptcy) of Legal Person
- Article 67: Consequences of the Declaration of a Legal Person Insolvent (or Bankrupt)
- Article 68: Execution on Property Belonging to a Legal Person After Liquidation
- Article 91: Liquidation of a Limited Partnership
- Article 286: Property of a State Enterprise (staff have rights to demand placement of enterprise in lease or transformation into another enterprise if state agency authorized to manage state property decides to reorganize or liquidate except when the enterprise is recognized to be bankrupt).

b) Homestead Rights

It is not clear what kind of an allowance for homestead rights is permitted for businesspersons, production and consumer coops, or leased enterprises facing bankruptcy, (Art. 26, 64, and 65, Civil Code); and (Art. 76, 77 Bankruptcy Law). Article 76 of this law states, "The property withdrawn from turnover, the property rights connected with the debtor's personality including the rights based on permission on realization of certain kinds of activity, as well as other property in the present Law is excluded from the debtor's property making the bankruptcy assets." The allowance needs to be more clearly written and specifically state what is excluded from the debtor's property subject to bankruptcy.

6.0 LAND MANAGEMENT

6.1 REGULATION ON PROCEDURE FOR TRANSFER OF LAND FROM ONE CATEGORY TO ANOTHER, AND FROM MARGINAL TO UNPRODUCTIVE LAND,” NO. 333, JUNE 14, 1994

6.1.1 Summary of Main Issues

- This regulation provides that decreasing the area of irrigated lands and other high-productive lands, including their transfer to the categories of marginal or unproductive land is not allowed, except for specific instances.
- Transfer of lands from one category to the other, as well transfer of valuable lands to marginal and unproductive land shall be implemented by the Executive Committees of Councils of People’s Deputies and the Council of Ministers.
- Land can be transferred from the category of irrigated land to non-irrigated land if there is a loss of water or breakdown of the irrigation system.
- Land can be transferred from productive land to unproductive land in case of natural disasters or when land is withdrawn for state or public needs.

6.1.2 Recommendation

As part of a larger effort to evaluate land use and zoning regulations, consider the process for changing land from one category to another, including which agency should be responsible for these changes and what the process for change should be. To require that such changes be approved by Republican-level Councils may unnecessarily hinder development of land. On the other hand, with such a small arable land base, it becomes very important to make such decisions rationally and to protect arable land.

6.2 REGULATION ON ASSIGNMENT OF LAND PLOTS FOR STATE AND PUBLIC NEEDS, NO. 329, JULY 14, 1994

6.2.1 Summary of Main Issues

This regulation describes allocation of land for public use but appears to include under “public use” transfer of land from one private party to another. State and public needs are not defined. However, a process is described whereby an enterprise, or organization can submit requests for land to the appropriate *khukumat* or to the government (Art. 2(1)). If they are awarded land that was taken from another private party, they must pay compensation.

- Land can be allocated for state or public use pursuant to a government decree or a decision of the *khukumat* (Art. 1(2)).
- Arable land can be taken only in special cases, and only by decree, (Art. 1 (5)).

- There is no description of the process required for a land taking; in particular, no notice requirements, nor any opportunities for a land holder to object are required.
- For collective and state farm land, the members must make a decision for allocation of the land. It is unclear what this process is refers to—the withdrawal of a land share or some other allocation.
- Section 4 of this regulation describes the process for allocation of land plots for agricultural production. The procedure described here is similar, but different from other laws similar provisions, such as the Land Fund, and it is unclear where this land will come from.
- The *rayon kebukumat* can make a decision (with consent of the land users), to reallocate land among land users due to fragmentation.

6.2.2 Recommendations

- This law is confusing and needs amending. The process of land allocation from collective or state farms is described in other legislation and should be deleted from this law.
- ‘Public use’ and ‘state need’ should be defined in detail. A process for such withdrawals should be established, and land should only be withdrawn by a court order.
- Land should not be taken for redistribution to other enterprises or private businesses because that type of redistribution does not serve a state or public need, and can cause major land tenure insecurity. Local government has a great deal of power. With no process described, this area is ripe for corruption and abuse. Some provision for sale of the right to use land should be considered so that such exchanges can be privately contracted.

6.3 “REGULATION ON PROCEDURE FOR RECOVERY OF DAMAGES AND LOSSES OF AGRICULTURAL (FORESTRY) PRODUCTION ASSOCIATED WITH WITHDRAWAL OF LAND FROM AGRICULTURAL AND FORESTRY USE TO LAND USERS,” NO. 463, SEPTEMBER 15, 1994

6.3.1 Summary of Main Issues

- Losses caused by withdrawal or compulsory temporary use of land plots, restriction of rights of land users, or deterioration of the land as a result of other activity must be compensated. Losses related to immovable property and crops will also be compensated, (Art. 2 (1-2)).
- When immovable property (such as apartments or kitchen gardens) is destroyed because the land plot is re-allocated for state or public use, citizens have a right to be compensated for the immovable property, or alternately, relocated.
- Losses of agricultural production are not compensated if the land is withdrawn to build a dwelling, for construction of schools, children’s homes, medical facilities, or cemeteries, or if the land is withdrawn for irrigation or other water or drainage projects.

6.3.2 Recommendations

- Withdrawal of land and compensation for such withdrawal does not include a process for notice and an opportunity to be heard. The land use right holder should have an opportunity to dispute the choice of land for withdrawal and to dispute the amount of compensation provided if it is inadequate.

- When agricultural land is withdrawn for specific public uses as described above (such as schools, hospitals, etc.) the land use right holder should nevertheless be compensated for this loss and should not bear the loss for the whole community.

6.4 REPUBLIC OF TAJIKISTAN, ON CONCESSION, NO. 429, MAY, 15, 1997

6.4.1 Summary of Main Issues

a) Content of the Concession Law

This law is supposed to regulate agreements between Tajikistan and foreign investors for temporary use of land, natural resources or enterprises (Art. 1). This law appears to be a shell for a hypothetical concession agreement, but does not include the necessary provisions that would guide a concessionaire, or their agent, in seeking to enter concession agreements in Tajikistan, or for resolution of any conflicts related to a concession agreement.

b) Conflicts Arising from Concession Agreements

The law does not address any potential conflicts between existing land users and the government, when the government enters into concessions without land user permission for mineral, water or substrate rights.

c) Allocation of Government Authority to Manage Concessions

This law provides extraordinary power to local governments to enter into concession agreements, (Art. 8). This is shortsighted since concession agreements, by their very nature, involve foreigners extracting resources from Tajikistan. Concessions, and the negotiations needed for concessions should be centrally managed by the government of Tajikistan, or an authorized agent of the central government.

d) Concession Valuation

This law does not provide any guidance on valuation of the object of the concession agreement, or standardization of the price of a concession throughout the country. This would be beneficial -- either it could be addressed in this law, or a process for valuation could be prescribed. Additionally, it may be advisable to create a price floor for concession bids.

6.4.2 Recommendations

- It would be advisable to include more instructions in this law for the process and structuring of a concession agreement. Further, a reliable dispute resolution process is needed in order to protect the government, any land users who are effected by the government's concession agreement, and also to protect the concessionaire.
- The law should provide more detail on items that are not permitted under this concession law -- what may not be the subject of a concession, and how a price floor for a concession bid is determined.
- Local government should be prohibited from concluding independent concession agreements.

6.4.3 Issue Detail

a) Characterization of Property Rights

In Article 4, the law states that an entity holding objects of the concession does not implicate a transfer of the property right in those objects to the concessionaire. This is too vague. The law should specify what property right the concessionaire does hold or what property right a concession agreement could create, i.e., lease for term, long-term use rights, license, profit, etc.

b) Concessionaire's Products

In Article 4, Tajikistan has a 'primary' right to purchase products from the concessionaire. This would be better phrased as a 'right of first refusal,' since 'primary' right is not defined elsewhere in the law.

c) Objects Not Subject to Concession

According to Article 6, the Tajikistan government can provide a list of objects that may not be subject to concession. The appropriate location for this list would be within the Concession Law.

d) Concession Offers

Article 9 states that offers are to be prepared by 'concession bodies' – this phrase is not adequately defined in the law except to state that these are bodies authorized by the government to be involved in concession activity. The definition of 'concession body' should be expanded to explain what type of entity may be a concession body. Further, requirements for the offers should also be provided in the Concession Law.

e) Concession Bids

Article 10 lists the content required in any bid. It would be advisable to require that concession bidders also identify and disclose any conflicts of interest that they may have. Also, any false information submitted in the bid should be grounds for refusal of the bid (not just false information about financial or technical capabilities).

f) Protection of Existing Land Users

Article 11 provides that a concession agreement can be concluded by the foreign investor and the Tajik government. This law does not address any potential conflicts between existing land users and government's granting of a concession to foreigners for mineral or substrate rights. If land use rights have already been granted to an individual or entity, the government should not be permitted to use the property as a concession, or minimally, the existing land users need to receive notice and an opportunity to be heard, as well as compensation for lost profits caused by relocation, or nuisance created by the concession.

g) Local Government vs. Authorized State Management Body

In Articles 7 and 8, these two entities have overlapping duties and obligations regarding concession agreements. Since concessionaires are by definition, foreign entities, it would be beneficial for concessions to be centrally managed and concluded by the Tajikistan government. Local State government should not be permitted to independently enter into concession agreements (except to veto proposed concessions), negotiate for, or conduct contests and auctions for concessions.

6.5 PRESIDENTIAL DECREE "ON PRESERVATION AND RATIONAL USE OF IRRIGATED LAND," NO. 335, JUNE 25, 2000

6.5.1 Summary of Main Issues

- This decree prohibits allocation of land plots for construction of houses and non-industrial enterprises at the expense of irrigated subsidiary plots.

- This decree requires the Land Committee, ministries, and law-enforcement bodies to develop urgent measures for carrying out this decree.

6.6 REGULATION “ON PROCEDURE FOR RECOVERY OF DAMAGES AND LOSSES OF AGRICULTURAL PRODUCTION TO LAND USERS,” NO. 515, DECEMBER 30, 2000

6.6.1 Summary of Main Issues

- This regulation provides detail on how to calculate damages, and which damages will be paid when agricultural land has been withdrawn from use.
- Allows withdrawal of agricultural land by the government for distribution to individuals or private enterprises. Losses to land users will be compensated from the funds of legal persons and individuals, to which the land is allocated for use.

6.6.2 Recommendation

Under no circumstances should government agencies withdraw land from one private party to distribute that land to another private party. Land should be withdrawn by the government for public purposes only, and those purposes should be narrowly defined. Withdrawals for the private gain of another will cause serious land tenure insecurity.

6.7 REPUBLIC OF TAJIKISTAN, “ON LAND MANAGEMENT,” NO. 20, MAY 12, 2001

6.7.1 Summary of Main Issues

a) Local vs. State Control of the Land Management System

What are the responsibilities of the state bodies, and local bodies, respectively? The Land Code itself requires that both state land management bodies and local governments of the GBAO, regions, cities, and *rayons* have control over the land management system. See Articles 6 & 7 of the Land Code.

b) Missing Cross-References

The core provisions of the land management system of Tajikistan are found in the Land Code. This law appears to expand on information found in the Land Code. However, the Land Code articles that are relevant need to be cross-referenced in this law.

c) Open Records

According to Article 7, data relating to land management is to be open, except for state secrets. If information is requested, and the data request is refused, the denial may be appealed to court.

d) Interfarm Land Management

This is a reference to management of the territories of agricultural enterprises and *dekhkan* farms (Art. 27). This article discusses the duties of land management at the farm-level, and requires that farms make a contract with the district *khukumat* agreeing to specific actions.

e) Remedies

Remedies for infringement of the provisions of the Land Management law are ostensibly provided. However, Articles 34-36 provide only a cursory outline of the fact that judicial review and remedies are available.

6.7.2 Recommendations

a) Government Authority and Control

The Land Code needs to more carefully delineate the areas of the responsibility for the various government bodies relating to the Land Management Law. Currently, there is too much overlap, which is duplicative, confusing and potentially contentious.

b) Missing Cross-References

Cross-reference applicable provisions of the Land Code in the Land Management Law. There is a lack of congruency between the Land Code and the Land Management Law.

c) Open Records

A number of issues arise around this provision – including the scope of state secrets, the efficacy of judicial appeals after an initial denial of information (an administrative appeal might be more efficacious), and policy issues relating to governance. Article 12, relating to normative and technical documents on land management should also be included in consideration under this topic. If data on land management is to have an ‘open’ character, it would be advisable to consider how best to provide information access to the public.

6.7.3 Issue Detail

a) Land Management Purpose and Principles:

According to Articles 4 and 5 of the Land Management Law, the purpose of the law is wide-reaching. Further, there are 9 guiding principles for the law.

b) Financing Sources

Article 11 provides that there are a multitude of entities funding land management. It would be advisable to be more clear about what portion of the overall budget for land management is coming from what source of funding. As the law currently reads, there is only a list of all the possible sources of finance, with no more detail about expected commitments.

c) Suggested Cross References to Land Code

- Article 6: Competence of State Bodies on Land Management in regulating land relations
- Article 7: Competence of Local Governments of the GBAO, regions, cities, and *rayons*
- Article 8: Jurisdiction of *Djamoats*
- Article 15: State Registration of the Right to Land Use
- Article 23: Assignment of land plots for Agricultural Purposes
- Article 26: The Right of Local Authorities in Allocation of Land Plots
- Article 27: Transfer of the Right to Use Land Plot and its Allocation

- Article 28: Establishment and determination of the land plot borders in the field
- Article 30: Procedure for withdrawal of land plots for non-agricultural purposes
- Article 31: Conditions on land for non-agricultural purposes
- Article 39: Termination of land use
- Article 47: Settlement of land disputes
- Article 49: Acknowledgement of tenant rights
- Chapter 10: System of Land Management, Land Cadastre and Land Monitoring
- Article 57: Purpose of the system of land management
- Article 61: Contents and purpose of the state land cadastre
- Article 74: Location of objects of inter-farm construction
- Article 75: Procedures and terms of allotment of lands for agricultural purposes

6.8 “INSTRUCTIONS ON DETERMINATION OF THE DAMAGE TO PLOWED LAND BY CITIZENS OR LEGAL ENTITIES DUE TO VIOLATION OF THE LAND LEGISLATION OF THE REPUBLIC OF TAJIKISTAN,” NO. 7, FEBRUARY 25, 2003

6.8.1 Summary of Main Issues

- These instructions provides the guidelines for determining whether land has been irrationally used or whether other violations of land use have occurred. Penalties are established for violations, and a system for enforcement of these penalties is provided.
- If a violation is found, persons who have violated the law must explain the violation.
- A complaint for damages will be drawn up and handed to the offenders.
- If the offender fails to pay punitive damages within 30 days, a statement of action shall be drawn up and submitted to the court.

6.8.2 Recommendations

These guidelines should be rewritten and published in very simple, easy to understand terms so that all land users understand their responsibilities toward the land and the penalties for not following these instructions. The instructions themselves are too technical and would not be easily understood by the public at large.

6.9 STATE COMMITTEE ON LAND MANAGEMENT, METHODOLOGICAL INSTRUCTIONS ON VALUATION OF SOIL AND ECONOMIC VALUATION OF LAND OF THE REPUBLIC OF TAJIKISTAN,” APRIL 18, 2003

These instructions require the evaluation of all land, both private and state, in terms of soil quality and economic value for the purposes of taxation and fees. The instructions also describe the methodology for this evaluation.

7.0 STATE INSTITUTIONS

7.1 TAXATION

7.1.1 Law on Determination of Indexation Coefficient of Land Tax Rates, No. 902, December 11, 1996

a) Summary of Main Issue

For the year 2000, the indexation coefficients for the land tax rates were raised. Also, the land tax increases by 0.7% per index point in the year 2001 due to the change of prices and tariffs for goods (works, services) and the cost of their production.

7.1.2 Republic of Tajikistan Resolution “On Approval of the Instruction On Calculation and Payment of the Land Tax”, No. 188, May 3, 1999

a) Summary of Main Issue

- The law fails to articulate the goal or rationale behind the land tax. Further there is no mention of fairness or equity, favoring individuals over legal entities, or citizens over foreign nationals (See General Provisions 1).
- For farm land, payment is to be made no later than October 15 and December 15 in equal shares of the annual amount. Calculation of the amount is done by local tax bodies by March 1. Calculations of land tax are submitted by the *kollektiv* (3 (11) and 3(12)).
- For the first 5 years when land is newly cultivated, or for the first year after allocation of previously cultivated lands, *dekhkan* farms are exempt from land tax payments (4 – Land Tax Allowances).
- Tax agencies are charged with implementation and enforcement of the law (6 – Control Procedures). It appears that local bodies play key roles in enforcement.

b) Recommendations

It is recommended that a clear goal or rationale for the land tax rate be articulated in order to guide future policy decisions.

c) Issue Detail

i) Rationale for Land Tax Rates

This Land Tax regulation does not indicate what goal or rationale the land tax system is based upon. In 1(4), the regulation states that “documentation of the land user” is the basis for determination of the land tax rate. However, there is no further explanation as to whether this means that a legal person would be taxed at a different rate from an individual, or whether the wealth or economic status of the land user has some relationship to the tax rate assessed. Notably, in 1(5), it states that the land tax does not depend on the land users’ economic activities....”

7.1.3 Republic of Tajikistan, “On Payment for Land,” No. 449, May 15, 1997

a) Summary of Main Issues

i) Contradictions Between No. 449 and No. 188

There is a lack of congruency between this law “On Payment for Land,” and the Resolution “On Approval of the Instruction On Calculation and Payment of the Land Tax.” The resolution and the law should be able to be read together, without contradicting one another.

ii) Agricultural Land Taxation

According to Article 3, the land tax is levied only on land users who are actually producing agricultural products. Tax is not levied against their income (unless they are involved in poultry, hothouse business, stockbreeding, fish processing, etc.).

iii) Centralized control of land use charges and taxation.

Taxation appears to be audited and monitored locally (Art. 6). Article 6 states that local tax departments register taxpayers and control the correctness of calculation and payment.

b) Recommendations

- Fix the problems that arise when reading the Land Payment Law and the Resolution on Calculation and Payment of Land Tax together.
- Review agricultural land taxation – are lands that are fallow taxed? If they are not, they probably should be to encourage full use of Tajikistan’s agricultural resources.

c) Issue Detail

i) Contradictions Noted

- In Resolution No. 188, the land cadastre documentation purportedly serves as the basis for determination of the land tax rate (Instructions 6, 1, and 4), whereas in the Land Payment law, the basis of the land tax rate is the price of the point hectare (Art. 1). Is this ‘price’ a reference to the appraised value of the land?
- There are also differences in the payment dates for the land tax. The Land Payment law requires payment to local tax departments no later than February 1 (Art. 6). Resolution No. 188 has no corresponding provision to this payment date. However, both laws require that taxes for agricultural lands be paid at different times of the year. Resolution No. 188 requires payment for agricultural lands on October 15 and December 15 annually. (See Section III, Terms of Land Tax Payment), while the Land Payment law requires payment for agricultural lands not later than November 15 (Art. 7).

There are differences in the categories of land exempted from the land tax. Compare Article 9 of the Land Payment law to Resolution No. 188’s Section IV, para. 13. These categories need to be made identical so as to not contradict one another. For example, in the Land Payment Law, persons who receive lands requiring re-cultivation are exempt from the land tax for three years, while in Resolution No. 188 they are exempt from the land tax for five years.

7.1.4 Law “On Fixing of Average Rates for Land Tax, No. 195, April 19, 2001

a) Summary of Main Issues

- This law approves the average rates of the land tax by *oblasts*, *rayons* and semiurban centers of Tajikistan.
- The tax rates listed are basic rates, and will be adjusted according to the coefficients established in Law No. 902, described above.

7.1.5 Law, “On Updates and Amendments in the Tax Code of the Republic of Tajikistan,” No. 28, May 10, 2002; (Amendments to the Tax Code of the Republic of Tajikistan (Akhbori Majlisi Oli of the Republic of Tajikistan – 1998, No.21, Article 284; 1999, No.6, Article 162, No.12, Article 344; 2001, No.7, Article 478))

a) Summary of Main Issue

This law establishes a flat-rate tax for *dekhkan* farms for activity related to agricultural production and delivery, but not processing. The tax will be based on the size of the land plot and will eliminate the VAT tax, road tax, land tax, profit tax, vehicle, enterprise, small-business, and local taxes.

7.2 LAND REGISTRATION

7.2.1 Instruction on Procedure of Legal Registration of Constructions, Structures, and Other Objects in Cities, Regional Centers, and Villages of the Republic of Tajikistan, No. 217011, April 4, 1999

a) Summary of Main Issues

- Provides that there is no requirement for legal registration of land for parcels of land under responsibility of the Land Committee, handed over to it in accordance with the Land Code of the Republic of Tajikistan.
- Provides that the land under a house and surrounding a house should be registered together with the house.

7.3 LAND MANAGEMENT AGENCIES

7.3.1 Law “On the Ministry of Agriculture of the Republic of Tajikistan,” No. 336, July 5, 2001

a) Summary of Main Issue

The Ministry of Agriculture is not given responsibility for the land reform. The MOA is responsible for assisting and removing obstacles facing the *dekhkan* farms, for farm productivity, and farm reorganization.

7.3.2 Resolution on State Land Committee, No 189, April 19, 2001

a) Summary of Main Issues

The Land Committee’s obligations are very broad. The Land Committee is responsible for developing policy and legislation, establishing the rate for rent and taxation for land, maintaining the land cadastre and the registration agency, and implementing the land reform.

b) Recommendation

Further review and discussions should occur to determine how best to support the Land Committee in its disparate and difficult tasks.

c) Issue Detail

- The resolution describes the staff and organizational structure, dictates the number of staff, and lists the duties of the Land Committee.
- The Land Committee's duties are very broad and comprehensive and include, but are not limited to:
 - Development of state policy in the area of land regulations and implementation of the land reform
 - Develop policy and implement that policy for land management, land use, and land regulations.
 - Maintain the land cadastre and land monitoring.
 - State registration of the right to use land.
 - Draft legislation on all of the above.
 - Submit proposals on the land tax rate, penalty for violation of land legislation, land lease payment and payment for a limited use of land, and manage these funds.
 - Participate in establishing non-profit organizations for the furtherance of land reform (9).

7.3.3 Regulation on Local Land Management Committees

a) Summary of Main Issues

- The *rayon*-level Land Committees are given much of the responsibility for implementing the land reform. Their duties (only on the land reform) include:
 - Determination of candidates for receiving land plots;
 - Assignment of land plots to natural persons and legal entities;
 - Protection of land-users' rights;
 - Consideration of cases on infringement of the land legislation;
 - Determination of a land share for the workers of large land-users;
 - Declaration of land ownership.

b) Recommendations

- The *khukumats* now have to sign off on the work of the local Land Committees. A better system might be for the Land Committee to be part of a farm-level commission that determines who can receive a land plot and how that plot is chosen (under more strict regulations than currently exist—requiring openness and transparency). The *khukumat* might be a member of the commission, but the ultimate authority should not be with the *khukumat* alone.
- The local Land Committees will be making many decisions and adjudicating disputes. Many of the disputes may be about the Land Committee's decisions. Perhaps another body could be appointed to hear land disputes in the first instance (the right to appeal to court should always be an option).

7.4 GOVERNMENT PROGRAMS

7.4.1 Government Resolution “On Program of Cotton Growing Development in the Republic of Tajikistan for 2002-2005,” No. 80, March 4, 2002

a) Summary of Main Issues

- One of the fundamental rights of land tenure is the right to make independent decisions about how to use the land, that is, what crops to grow, what seeds to use, what fertilizer, etc. Without this right, the long-term land use rights given by the state are virtually meaningless.
- This program, set out in Resolution No. 80, is a central plan for cotton production, requiring certain *rayons* to meet a state set target for cotton.
- The law calls on the *khukumats* of regions, towns and *rayons* jointly with investors to take measures to create machinery-tractor services (MTS) in each *rayon*. These same investors and *khukumats* are responsible for meeting the state set targets.

b) Recommendations

- Given that cotton is such an important export crop and is so central to Tajikistan’s economy, the issues presented by this resolution are outside the scope of this paper. However, one of the main reasons to privatize land in Tajikistan is to increase production. International evidence shows that private ownership of land increases production and investment on that land because it is in the best interest of the land right holder. If the state continues to mandate that the land right holder use his land to grow cotton, the land right has not been privatized. There can be no private ownership without the ability to independently choose how to use the land.
- One possibility would be for the state to provide private land right holders with market incentives to grow cotton—tax benefits, debt reduction, etc.

7.4.2 Presidential Decree, “On Additional Measures to Provide Effective Activity of Cotton Growing Farms and Investors while Producing, Processing, and Selling Cotton,” No. 899, September 10, 2002

a) Summary of Main Issue

The decree is aimed at introducing market relations into the cotton industry. The decree requires that certain monopolistic practices stop, and allows cotton growers more freedom to choose their own investors.

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